

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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**PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES**

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TAKESHI TANIMOTO and KENJI YAGI

Appeal No. 2004-0406
Application No. 10/050,173

ON BRIEF

Before KRATZ, JEFFREY T. SMITH, and POTEATE, Administrative Patent Judges.

KRATZ, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-7, which are all of the claims pending in this application.

BACKGROUND

Appellants' invention relates to developing apparatus useful in image formation via an electrophotographic process. An

understanding of the invention can be derived from a reading of exemplary claim 6, which is reproduced below.

6. A developing device comprising a developer carrying member rotatable in a direction against gravity at a contacting point with or a point closest to a photosensitive member adapted to have an electrostatic latent image carried thereon, and a cover for sealing a developer to be conveyed by the developer carrying member in the cover, the developer carrying member carrying and conveying the developer stored therein to develop the electrostatic latent image on the photosensitive member; and further comprising at least a clearance regulating member provided so as to be free from contact with a surface of the developer carrying member, the clearance regulating member regulating a clearance for an upper side of the developer carrying member; wherein the clearance between the developer carrying member and the clearance regulating member is determined at a size not greater than a maximum height of the developer projected from the surface of the developer carrying member.

The sole prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Takeda et al. (Takeda)	5,327,339	Jul. 05, 1994
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Claims 1-7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Takeda.

We refer to the brief and to the answer for a complete exposition of the opposing viewpoints expressed by appellants and the examiner concerning the issues before us on this appeal.

OPINION

Having carefully considered each of appellants' arguments set forth in the brief, appellants have not persuaded us of reversible error on the part of the examiner. Accordingly, we will affirm the examiner's rejection for substantially the reasons set forth by the examiner in the answer. We add the following for emphasis.

Appellants (brief, page 5) state that "claims 3 and 5 stand or fall with claims 1 and 6," whereas claims 2, 4 and 7 are identified as a separate claim grouping. However, appellants' brief does not include separate arguments for the patentability of appealed claims 2, 4 and 7 in compliance with 37 CFR § 1.192(c)(7) and (c)(8) (2000). See In re McDaniel, 293 F.3d 1379, 1383, 63 USPQ2d 1462, 1465 (Fed. Cir. 2002) ("if the brief fails to meet either requirement, the Board is free to select a single claim from each group of claims subject to a common ground of rejection as representative of all claims in that group and to decide the appeal of that rejection based solely on the selected representative claim"). Consequently, we select claim 6, as the representative claim, on which we decide this appeal.

Under 35 U.S.C. § 102(b), anticipation requires that the prior art reference disclose, either expressly or under the

principles of inherency, every limitation of the claim. See In re King, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986).

Appellants do not argue against the examiner's determination establishing that Takeda discloses structure including a developer carrying member (sleeve 22), photosensitive member (drum 3) and cover (container 36) for sealing a developer that corresponds to the structure of like items as recited in representative claim 6. However, appellants do dispute the examiner's determination that the structural member located above the developer carrying member or developing sleeve (22, fig. 6) of Takeda (see item labeled x by appellants in a copy of Takeda's drawing figure 6 that accompanies the brief) represents structure that identically corresponds to the claimed clearance regulating member insofar as the relative location of that structure to the developer carrying member.

We are not persuaded by the arguments advanced by appellants in the brief before us. We note that the examiner (answer, page 5) has reasonably determined (answer, page 5) that:

by looking at figure 6 of Takeda et al. (...339), the clearance, distance, between the developing sleeve (22) and clearance regulating member is smaller than a maximum height at which the developer, shown as circles and dots in figure 6, is projected from the surface of the developer carrying member (22). Thus, Takeda et al. (...339), discloses that the clearance between the surface of the developer carrying member and the clearance

regulating member is of a size no greater than a maximum height of the developer projected from the surface of the developer carrying member....

Appellants' generalized statement in opposition (sentence bridging pages 6 and 7 of the brief) does not specifically address, much less convincingly refute, that determination of the examiner. More particularly, appellants (brief, page 7) also urge that:

It must be noted, however, that the clearance regulating member has a central portion which is in contact with the developer. Accordingly, it is clear from Figure 6 of the reference that there is no clearance with the developer at the central portion of the clearance regulating member identified as X in the attached drawing figure. The present invention, contrariwise, aims at regulating the clearance by the clearance regulating member, not the leading edge thereof.

We do not find that last noted argument persuasive for reasons stated by the examiner. In particular, the examiner (answer, pages 5 and 6) remarks:

this argument is considered to be irrelevant to the claimed invention since there is no language in any of the claims prohibiting such a contact. The claims recite that the leading edge of the clearance regulating member, not the central portion, is free of contact with the developer. Further, the claims recite that the clearance regulating member is free from contact with a surface of the developer carrying member, not developer. As previously explained, in figure 6 of Takeda et al. (...339) the clearance regulating member, labeled by Appellant as X, does not contact the surface of the developer carrying member (22)....

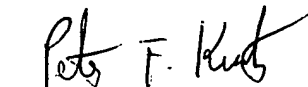
We agree with the examiner in that representative claim 6 provides that the clearance regulating member is "free from contact with a surface of the developer carrying member" not free from contact with developer. On this record, for reasons well-stated in the answer, we will sustain the examiner's rejection.

CONCLUSION

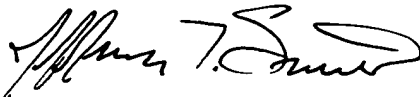
The decision of the examiner to reject claims 1-7 under 35 U.S.C. § 102(b) as being anticipated by Takeda is affirmed.

No time period for taking any subsequent action in connection
with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED



PETER F. KRATZ)
Administrative Patent Judge)



JEFFREY T. SMITH)
Administrative Patent Judge)

) BOARD OF PATENT
) APPEALS
) AND
) INTERFERENCES



LINDA R. POTEATE)
Administrative Patent Judge)

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